IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1944

THE UNITED STATES OF AMERICA,	:	
Petitioner,	:	Case No. 313
-vs-	:	
WILLARD F. VAN PELT,	:	RESPONDENT'S BRIEF
Respondent.	:	

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Respondent appears in forma pauperis. He opposes this petition for a writ of certiorari for the following reasons:

I. The decision of the Circuit Court of Appeals below correctly stated the law. (P. 3)

II. The question involved is not one of general interest. (P. 7)

III. The question involved was determined as the law of this case by the Circuit Court of Appeals on April 6, 1943. That decision was not appealed. (P. 8)

IV. The granting of this petition would work an unjustified individual hardship on this respondent. (P. 9)

CASE REVIEW

Respondent's yearly renewable term insurance policy lapsed July 1, 1919. It was reinstated on June 29, 1927. On May 9, 1934 respondent became totally and permanently disabled and applied for insurance benefits. These benefits were granted in October, 1934 by the Insurance Claims Council and were paid until March 9, 1939, when payments were discontinued because of alleged fraud in the procurement of the reinstatement.

In its answer to the respondent's suit the Government alleged:

1. That there was no disagreement between the respondent and the Veterans Administration;

2. That respondent was not totally and permanently disabled;

3. That the respondent had been treated for syphilis in the period between the lapse of the policy and its reinstatement;

4. That the respondent had syphilis before enlisting in the United States Army and had denied the same in his application for reinstatement.

The issues so presented by the Government's Answer were tried in the District Court without a jury, resulting in a judgment for the Government followed by the granting of a new trial. A second trial was had before a jury and a different judge. Under what amounted to a directed verdict the jury found for the Government. The case was appealed to the Circuit Court of Appeals for the Sixth Circuit and counsel for the Government in its brief admitted that error had been committed in the trial below concerning evidence of good health, but the issue as to whether or not the Government was entitled in the application for reinstatement to inquire as to pre-service physical condition was argued thoroughly by both sides and the Court of Appeals determined that the Government in placing such questions in the application for reinstatement did violate the law, and that the answers thereto were therefore not fraudulent. No motion for a rehearing was filed in the Circuit Court of Appeals nor was any appeal attempted to the Supreme Court. The case was remanded to the District Court for a new trial on the three remaining factual issues presented.

In the District Court the Government withdrew all of its factual defenses and set up in its Answer the sole defense that the Court of Appeals had determined to be contrary to law, that is, a denial of pre-service

syphilis in the application for reinstatement. The District Judge granted judgment for plaintiff on the pleadings. The Government appealed and the appellee filed a motion to dismiss the appeal on the ground that the former judgment of the Circuit Court of Appeals determined the law of the case. The Court of Appeals did not expressly pass upon this motion but granted judgment for the appellee in that cause, the respondent herein.

ARGUMENT

I.

There was no error below.

The original yearly renewable term insurance policy taken out by respondent contained no provision allowing reinstatement. Neither was there any specific provision in the original War Risk Insurance Act providing for reinstatement of lapsed policies. However, the Administrator, under his general administrative powers granted reinstatement of lapsed policies in all cases where the veteran could establish his good health at the time of reinstatement.

On August 9, 1921, Section 408 of the War Risk Insurance Act was added.* This addition subsequently became Section 515, Title 38, U.S.C.A. (World War Veterans Act). By this addition the Administrator was authorized to reinstate lapsed insurance policies in the case of disabled veterans, provided such disability was not total and provided it was service connected.

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* 42 Stats., 156

Thus there developed in the Veterans Administration two definite methods of reinstating lapsed insurance policies. One, by virtue of administrative regulations, which might be designated as "good health" reinstatement; the other covered by statute which might be designated as "disability" reinstatement.

On March 5, 1925 Congress amended Section 304 of the World War Veterans Act (Section 515, Title 38, U.S.C.A.) by providing that:

> "No term insurance shall be reinstated after July 2, 1926."*

Thus Congress took from the Veterans Administrator all power to reinstate yearly renewable term insurance either by statute or by his own regulations.

On July 2, 1926, however, the number of reinstatements had been so unsatisfactory that Congress re-authorized the Veterans Administrator to reinstate lapsed insurance policies for one additional year, or until July 2, 192. This grant of power was vested in the Administrator by the last sentence of Section 304, of the Act, which reads:

> "No yearly renewable term insurance shall be reinstated after July 2, 1927."**

In this same Act of July 2, 1926, Congress also amended Section 200 thereof, causing the same to read as follows:

> "That for the purposes of this Act every officer, enlisted man etc., *** shall be conclusively held and taken to have been in sound condition when examined, accepted and enrolled for service, except as to defects, etc., *** made of record*** at the time of *** inception of active service."

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* 43 Stats., 311
** 44 Stats., 790

Prior to this amendment of Section 200, the phrase "for the purposes of this Act" had read "for the purposes of this section". Thus Congress on July 2, 1926 vested in the Veterans Bureau power to reinstate yearly renewable term policies, which power it had theretofore on March 5, 1925 expressly taken away. Thus the extension of this power in the Veterans Administrator most obviously became one of "the purposes" of the Act to the same extent as any other provision of the Act, and when Congress changed the phrase "for the purposes of this section" to "for the purposes of this Act" it stated as clearly as words could express thought that it desired the Administrator, in exercising the newly granted power, to conclusively presume that all veterans seeking such reinstatement were in good health at the time of their enlistment.

With the law itself so unassailably clear we submit that all of that portion of the Government's brief pertaining to hearings before committees and correspondence between officers of the Veterans Administration is wholly immaterial. Such aids to statutory construction are only allowable when the statute itself is not clear.

The Insurance Claims Council of the Veterans Administration itself in October, 1934, definitely decided against the present contentions of the Veterans Administration. At that time Van Pelt made an application for insurance payments because of total and permanent disability. The Insurance Claims Council had before it evidence of Van Pelt's pre-service syphilis and of his medical treatment therefor. It had Van Pelt's Application for reinstatement and his denial in said application of such pre-service syphilis

and it held that such denials did not constitute fraud and authorized payment to Van Pelt. As a result of such finding the Veterans Administration made payments to Van Pelt for a period of almost five years.

This decision of the Insurance Claims Council in October, 1934, is set forth in a report of the Insurance Claims Council dated March 11, 1939 which was in evidence before both the District and Circuit Courts below, and the pertinent portions of which are attached as Appendix "A".

The only direct authority relied upon by the Government is U.S. vs. Searls, 49 F. (2) 224, (See page 20 Petitioner's brief). That was a case in which a veteran sought to recover on an insurance policy and claimed that his disabilities were of service origin. He cited Section 200 of the World War Veterans Act as amended in July, 1926, as authority for the contention that there must be a presumption of pre-service good health in all insurance cases. The District Court below directed a verdict for the veteran on this theory. The Circuit Court of Appeals reversed this directed verdict on the grounds that the presumption of good health applied only to compensation cases and to applications for reinstatement of lapsed insurance policies.

The Government now attempts to read into the Searls decision a statement that the presumption of pre-service good health applied only to "disability" reinstatements and not to "good health" reinstatements, although the authority to grant both types of reinstatement is contained in the same statutory section (Sec. 304). Needless to say, no such distinction was before the Court in the Searls case and no such deduction is at all justified. In fact, we submit that the quoted paragraph of the Searls case is a substantial authority for the contentions of the respondent.

Not only do the statutes clearly sustain the respondent's position and the prior action of the Insurance Claims Council also support the justice of his claim, but the position of the Veterans Administration in this case is wholly untenable in the light of their own regulations.* Section 4112 of The Veterans Bureau Regulations No. 138, adopted July 2, 1926, provides that where insurance policies have lapsed for less than three months they may be reinstated without a medical examination. At the top of the medical portion of Van Pelt's application for insurance reinstatement was printed: "This examination is necessary only when insurance has lapsed for a period of more than three months." The question as to pre-service health is included only in the report of the medical examination of the reinstatement application. Consequently, if Van Pelt's policy had lapsed less than three months, he would never have been asked as to pre-service syphilis; yet the insurance risk of the Government arising out of the pre-service syphilis would be exactly the same whether the lapse was more or less than three months. In fact, there is not the slightest common sense, reason, or justice in attempting to defeat Van Pelt's present insurance claim when no such attempt would have been made if his insurance policy lapse had been less than three months.

II.

The question involved is of no general interest.

The law as laid down by the Circuit Court of Appeals below applies only to yearly renewable term insurance policies which were reinstated between July 2, 1926 and July 2, 1927. It does not apply to any policy converted or

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* See Appendix "B"

reinstated since 1927. The Government's brief on page 12 says that during that year 245,000 policies were acted upon. Out of this group only one policy, that of Van Pelt, raised the question involved in this case. The reinstatement of all such policies after July 2, 1927 is expressly prohibited by statute. Furthermore, there is nothing in the decision below to require the Veterans Administration to change its existing policy. It at least could wait until a second case might arise to get a conflicting Circuit Court decision with that of the Court below before taking the matter to the Supreme Court of the United States.

If only one such case has arisen in the last seventeen years, it is highly questionable that any second case of this kind will ever appear.

III.

The Circuit Court of Appeals below in its first hearing in April, 1943 determined the law of this case so far as the issue before this Court is concerned.

If the Government questioned the finality of that decision for the purposes of certiorari, it could most easily have waived its factual defenses in the Circuit Court of Appeals and made that decision unquestionably final (as it subsequently did in the District Court), and could have filed its petition for certiorari in 1943. The Government was evidently more interested in delay than in getting a prompt determination of this question. The Court of Appeals below in its decision evidently felt that the case should have been disposed of on Appellee's motion to dismiss because of the applicability of the principle of the law of the case, but instead arrived at the same result by passing on the merits so as not to inject an unnecessary issue in the case.

The cases cited by the Petitioner on page 9 of its brief merely set out exceptional conditions under which the law of the case does not apply. They do not conflict with the long series of familiar decisions on this subject applicable to the conditions of the Van Pelt case which we cited to the Court below but will not cite here. Reynolds Spring Co. v. L.A. Young Industries, 101 F. (2) 257, does not apply for the reason that the Court therein expressly stated that the issue before the Circuit Court on its second appellate hearing was a different issue than the one it had determined in its first hearing. It is true that decision did contain a statement that the principle of the law of the case applied only to the District Court, but such statement was not only obiter but, since it makes the "law of the case" synonymous with res adjudicata, was, of course, erroneous.

IV.

The respondent herein has been dragged through litigation for over five years. He has tried this case three times in the District Court and twice in the Circuit Court of Appeals. He is an invalided pauper and for the last six years has been hospitalized. He has always contended that he denied the existence of syphilis in his application for reinstatement because that question was placed in the midst of a number of questions on his application for reinstatement which were all directed exclusively to the period during which his policy lapsed, and he thought that when the Government asked about syphilis, the Government was asking him if he had contracted syphilis during the lapse of the policy. He has always denied any fraudulent intent, yet the Government by every artifice of delay has compelled this respondent to litigate a number of factual issues which never had any more merit than they had the day the

Government finally abandoned them in the third trial of this case before the District Court.

The Government has filed every pleading in this case on the last available day and procured every delay that it could possibly procure. For example, in this present petition there was no record to be printed and the brief was merely an abbreviated summary of the brief used in the Court of Appeals; and yet this petition was not filed until the last available hour.

CONCLUSION

In conclusion we submit that the federal statutes applicable on July 2, 1927 expressly prohibited the Veterans Administration from asking any questions pertaining to Van Pelt's pre-service health; that the Insurance Claims Council in October, 1934, with all of the facts in the Van Pelt case, held exactly as the respondent is contending here; that there is no reason or logic for the Veterans Administration to inquire into pre-service health in the reinstatement of policies lapsed over three months and not to make such inquiry in cases where the policies have lapsed less than three months; that there is no general interest in the question involved in this case; that the law of this case was determined by the Circuit Court of Appeals below on April 6, 1943; and that the granting of this petition would work such a hardship on the respondent as to be wholly disproportionate to any possible gains to be made by a more thorough and costly investigation into this case.

Respectfully submitted,

Attorney for Respondent.

APPENDIX "A"

The pertinent parts of the Report of the Insurance Claims Council, dated March 11th, 1939, reads as follows:

"On the application for reinstatement the veteran stated that he was then in as good health as he was at the date of the premium default, (July, 1918). He denied having been ill, contracted any disease or suffered any injury or been prevented by reason of ill health from attending his usual occupation, or consulted a physician in regard to his health since the lapse of his insurance. He denied having made application for compensation or training allowance. *** He denied ever having been treated for any disease of the genito-urinary organs. *** In answer to question No. 12 on the medical examiner's report — 'Has applicant ever had syphilis, gout or rheumatism?' the examining physician answered, 'No'".

"In a Decision rendered October 22, 1934, the Insurance Claims Council determined that the veteran had been permanently and totally disabled for insurance purposes from May 9, 1934, and that he was incompetent by reason of general paralysis of the insane. *** At the time the award action was taken in this case, the question of fraud was considered. At that time there was no evidence of misrepresentation which would constitute fraud. There was evidence in the Record that the veteran had a history of syphilis dating back to 1915, or 1916; that he had received treatment; that he believed that he was cured, and there was no evidence on record at that time of any treatment or activity of the syphilitic condition between June, 1919 and May of 1934, when the veteran was admitted to the Administration Facility at Lexington, Kentucky."

"At the time his insurance was awarded, there was some evidence in the record that the veteran had had syphilis in 1915, or 1916, prior to his enlistment in the Service, and that he had received treatment over a period of time. His blood was negative and he believed himself to be cured. There was no evidence of any activity of this condition, or that he had consulted a physician between the date of his discharge in June, 1919, up to the time that he entered the Veterans' Administration Facility at Lexington, Kentucky in May, 1934."

APPENDIX "B"

Section 4112 of the Veterans Bureau Regulation No. 138 reads as follows:

"Yearly renewable term insurance which has lapsed or has been canceled may be reinstated or reinstated and converted at any time on or before July 2, 1927, by the applicant making tender of the premiums as required in Sections 4096, 4110, and 4111, and upon compliance with the requirements of this section 4112 and under the following conditions:

(a) Within three calendar months, including the calendar month for which the unpaid premium was due, provided the applicant is in as good health as he was on the due date of the premium in default and so states in his application.

(b) After the expiration of the period mentioned in clause (a) of this section, provided the applicant is in good health and so states in his application and submits a report of a complete medical examination and such other evidence relative to his physical and mental condition and insurability as may be required by the director and on such forms as the director may prescribe (July 2, 1926)."